



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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OAG—4—11

Mr. Kevin Kennedy
Director and General Counsel
Government Accountability Board
212 East Washington Avenue, 3rd Floor
Madison, WI 53707

Dear Mr. Kennedy:

QUESTION PRESENTED

¶ 1. You have requested an opinion regarding the scope of a recall election involving the office of the governor. Specifically, you ask whether, in a recall election for governor, there must be an election of governor and lieutenant governor jointly under article V, section 3 of the Wisconsin Constitution, regardless of whether there has been a recall petition for the lieutenant governor under article XIII, section 12 of the Wisconsin Constitution.

SHORT ANSWER

¶ 2. I conclude that article XIII, section 12 of the Wisconsin Constitution requires a separate petition for the recall of each individual incumbent elective officer. A petition for the recall of an incumbent governor under article XIII, section 12(1) requires the filing officer to call a recall election for that incumbent's office, provided that the terms of article XIII, section 12 have been met. A recall election of a lieutenant governor shall be called only if a petition for recall is filed for that incumbent elected officer. In such a case, voters shall vote separately for that office.

ANALYSIS

¶ 3. Article XIII, section 12 describes the procedure for the recall of "any incumbent elective officer." Several of its requirements are structured around a singular, individual officer being recalled. A petition for recall must specify the individual officer who is sought to be recalled, permitting electors to petition for the recall of "any incumbent elective officer." Wis. Const. art. XIII, § 12. Electors seeking recall must file a petition "demanding the recall of the incumbent." *Id.* A recall petition may be offered for filing only after the expiration of the first year of the particular officer's term. *Id.* The incumbent officer is an automatic candidate in

the recall election unless the incumbent officer affirmatively declines. Wis. Const. art. XIII, § 12(4). The number of recall elections is limited for each individual officer: if the elected officer prevails in one recall election, no further petition shall be filed against the officer for the remainder of the term for which the officer was elected. Wis. Const. art. XIII, § 12(6).

¶ 4. The focus of article XIII, section 12 on the individual officer requires that the Government Accountability Board call a recall election only of the officer named in the petition. A petition for the recall of the governor must follow the same rule. Article XIII expressly applies to “any incumbent elective officer” and provides no exception under which a petition for recall of the governor would be treated as requiring a joint recall election of the governor and lieutenant governor. Calling a joint recall election of the two officers would contravene the plain language of article XIII, section 12 and would force electors to vote for the recall of two candidates or none, a result that would deny electors the opportunity to petition for the recall of “any incumbent elective officer” as the Constitution requires.

¶ 5. This conclusion also follows from the language in article XIII indicating that a petition to recall an officer results in only one winning candidate. Under article XIII, section 12(2), a petition compliant with the requirements of section 12(1) causes the filing officer to call a recall election for a certain date. The resulting winner of that recall election is described in the singular: “The person who receives the highest number of votes in the recall election shall be elected for the remainder of the term.” Wis. Const. art. XIII, § 12(5).

¶ 6. Article XIII, section 12 thus contemplates a sequence of events through which a petition for recall results in a single elected candidate. Calling a joint recall election based on the filing of a petition to recall the governor would be inconsistent with that sequence. It would cause a petition to recall the governor to lead to recall elections for two officers and would result in the election of two winning candidates. Article XIII, section 12 prohibits the recall election of multiple candidates based on the filing of a petition for the recall of only one officer.

¶ 7. As you note, in a general election, the governor and lieutenant governor are elected jointly and for the same term. Wis. Const. art. V, §§ 1, 3. You ask whether these provisions require that, following the filing of a petition to recall the governor, the Board must call a joint recall election of both the governor and lieutenant governor. I conclude that the cited article V provisions are inapplicable to a recall election.

¶ 8. Article V, section 1 provides that the governor and lieutenant governor “shall be elected at the same time and for the same term.” Article V, section 3 provides more specifically:

Election. SECTION 3. The governor and lieutenant governor shall be elected by the qualified electors of the state at the times and places of choosing members of the legislature. They shall be chosen jointly by the casting by each

voter of a single vote applicable to both offices beginning with the general election in 1970.

The phrase “times and places of choosing members of the legislature” refers to the general election. Article IV, section 4 provides that members of the assembly shall be chosen biennially “on the Tuesday succeeding the first Monday of November[.]” Article IV, section 5 provides that senators shall be elected “at the same time and in the same manner as members of the assembly[.]” Article V, section 3 thus applies to those gubernatorial elections that coincide with the partisan general elections at which members of the legislature are elected.

¶ 9. A recall election, in contrast, is scheduled “for the Tuesday of the 6th week after the date of filing the petition or, if that Tuesday is a legal holiday, on the first day after that Tuesday which is not a legal holiday.” Wis. Const. art. XIII, § 12(2). A recall election is not required to coincide with any legislative election. The different scheduling rules for the two procedures illustrate that article V, section 3 does not apply to a recall election under article XIII, section 12.

¶ 10. Further, although article V, section 1 provides that the two officers shall be elected “at the same time and for the same term,” other provisions of the Constitution contemplate that a governor and lieutenant governor will not always continue to hold office jointly. When the lieutenant governor fills a vacancy in the governor’s office caused by the governor’s death, resignation or removal from office, they will not continue to serve jointly. Wis. Const. art. V, § 7(1). The legislature’s impeachment of a governor results in the removal of only the governor, not the lieutenant governor. The lieutenant governor assumes the governor’s office in the event of removal, Wis. Const. art. V, § 7(1), and the lieutenant governor’s exclusion from the court trying the governor’s impeachment, Wis. Const. art. VII, § 1, indicates that the lieutenant governor is not jointly impeached. If a vacancy occurs in the office of the lieutenant governor, the governor continues to serve and appoints a successor to serve the remainder of the lieutenant governor’s term. Wis. Const. art. XIII, § 10(2).

¶ 11. In each of these circumstances, when the vacancy is filled, a governor and lieutenant governor will serve together who were not jointly elected. Importantly, in these scenarios, the new officeholder serves the balance of the unexpired term, not a new term. *See* Wis. Const. art. V, § 7(1); Wis. Const. art. XIII, § 10(2). This is also true with respect to recalls. Wis. Const. art. XIII, § 12(5).

¶ 12. Because the Constitution contemplates a number of circumstances under which a governor and lieutenant governor serve concurrently without being elected jointly, article V, sections 1 and 3 are properly interpreted to provide for the joint election of the two officers only at a general election for a new term. Those circumstances also reinforce the plain language interpretation of article XIII, section 12 applying recall petitions and recall elections only to individual officers.

¶ 13. In addition, construing article V, section 3 to require a joint recall would require the Board to call a recall election of the governor if only a petition for recall of the lieutenant governor were filed. To require a recall election of an incumbent governor, the chief executive of the state, based on a petition for the recall of the lieutenant governor, an officer with few constitutional duties, would work an absurd result.

¶ 14. The Constitution must be construed to harmonize and give effect to all its provisions. *State ex rel. Blockwitz v. Diehl*, 198 Wis. 326, 332-33, 223 N.W. 852 (1929); *State ex rel. Wausau St. Ry. Co. v. Bancroft*, 148 Wis. 124, 136, 134 N.W. 330 (1912); *Lumsden v. Cross*, 1 Wis. 277 (*317) (1860). In order to give full effect to article XIII, section 12, establishing the right of electors to recall “any incumbent elective officer,” and in light of the application of article V, section 3 only to general elections, I read article V not to apply to a recall election of the governor.

¶ 15. I conclude that, under the Wisconsin Constitution, a petition to recall a governor requires the filing officer to call a recall election of only the governor, not the lieutenant governor. Article XIII, section 12, which focuses on the incumbent officer holding office, permits the electorate to petition for the recall of a single elected officer. A recall election of the lieutenant governor may be called only if a petition is filed for that elected officer. The requirements of article V, that the governor and lieutenant governor be elected jointly and for the same term, do not apply to a recall election conducted under article XIII, section 12. Should petitions for recall meeting the requirements of article XIII, section 12(1) be filed for both the governor and the lieutenant governor, a recall election conforming to the requirements of article XIII, section 12 would be held for each office, not jointly.

Sincerely,

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